

Exhibit 2

(Filed Under Seal)

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

3 FAIR ISAAC CORPORATION, Court File No.
4 PLAINTIFF,
5 16-cv-1054 (WMS/DTS)

6 VS.

7 FEDERAL INSURANCE COMPANY
8 and ACE AMERICAN INSURANCE
9 COMPANY,

10 DEFENDANTS.

11

12

13 VIDEOTAPED DEPOSITION OF

14 BROOKS HILLIARD

15

16

17

18

19

20

21

22

23

24

25 Taken June 19, 2019

 By Brandi Bigalke, RPR

1 cases multiple licenses. 2 Also in the consulting environment 3 there were often multiple software licenses. If 4 there were multiple, and in most cases there 5 were, companies making proposals to my clients, I 6 in many cases reviewed the licenses of more than 7 just the desired or selected provider. 8 So while I say -- and perhaps 150 9 of those instances involved analyzing and 10 negotiating software licenses, in many of those 11 150 I analyzed multiple software licenses, and in 12 some of them I was involved in negotiation of 13 multiple software licenses. 14 Q. In connection with your statement 15 about your professional involvement in analyzing, 16 drafting, and/or negotiating several hundred 17 software licenses, what types of software are you 18 referencing? 19 A. Business-oriented software. 20 Q. Such as what? 21 A. Many of them are what would be 22 called enterprise software, which touches many 23 areas within a business from operations to 24 accounting to administrative. Many of them were 25 specialized software for particular business	1 that I recall. 2 Q. In the case that you referenced 3 involving protective order, who were you retained 4 by? 5 A. I was retained by a firm called 6 AZA, Anaipakos something. This -- 7 Q. Is this -- go ahead. 8 A. They're very lengthy names. The 9 firm goes by the name of AZA. 10 Q. What does that stand for? 11 A. Anaipakos I believe is the name of 12 the first individual. The second and third 13 individuals, one's last name begins with Z and 14 the next one begins with A. 15 Q. And who -- what is the party on the 16 opposite side of that lawsuit? 17 A. Pardon me? 18 Q. Could you identify the party on the 19 other side of that lawsuit? 20 A. Ford Motor Company. 21 Q. Where is that lawsuit venued? 22 A. Detroit. 23 Q. Do you know whether it's state 24 court or federal court? 25 A. Federal.
Page 33 1 applications. Virtually all of them were 2 business related -- business software -- related 3 to business software rather than technical 4 software or software oriented toward say 5 controlling equipment or system software. 6 Although there was some of that. 7 Q. With respect to your statement 8 about your professional involvement in analyzing, 9 drafting, and/or negotiating several hundred 10 software licenses, did any of those licenses 11 involve rules management software? 12 A. Yes. 13 Q. Could you identify those? 14 A. The one that comes to mind is an 15 ongoing case that's covered by a protective order 16 that I can't talk about, but most of them involve 17 rules management relating to configuration. It 18 could be configured to order manufacturing, it 19 could be configuration relating to distribution 20 of products. 21 So there would be rules as to what 22 product can go with what product, or if you buy 23 this one you have to buy that one, and you can't 24 get that one because it doesn't work with it. So 25 most of them were configuration management rules	Page 35 1 Q. Do you know who the judge is? 2 A. No. 3 Q. Who are the attorneys for AZA? 4 A. They've changed over a period of 5 time. AZA is the law firm, not the litigant. I 6 was engaged by the law firm. And the one 7 constant is a Mr. Mitby. Steven Mitby, 8 M-I-T-B-Y. 9 Q. Who does AZA represent in that 10 case? 11 A. A company called Versata, 12 V-E-R-S-A-T-A. 13 Q. What is the subject matter of that 14 lawsuit? 15 A. It's an intellectual property, 16 trade secret -- well, there are a number of 17 issues. My issues were related to trade secret. 18 Q. Does it involve software licenses? 19 A. Yes. 20 Q. Do you provide any -- have you 21 provided any opinions in that case relating to 22 software licenses? 23 A. I haven't provided any opinions in 24 that case. I was a consulting expert. 25 Q. So in that case did you prepare an

1 expert report?	1 last, I think it's four years that are required
2 A. No.	2 by the rule are in your possession.
3 Q. In this case would you say that	3 MR. FLEMING: Go ahead.
4 analyzing comparable software licenses is	4 THE WITNESS: I'd be happy to
5 relevant to your task?	5 address the cases on page 37 of my report, which
6 A. Would I say that analyzing software	6 are the ones within the past four years.
7 licenses is relevant, yes.	7 And could you ask the question
8 Q. Would you say that analyzing	8 again, or could we read back the question so that
9 comparable software licenses is relevant to your	9 I'm answering it specifically.
10 task?	10 MR. HINDERAKER: Sure.
11 A. In terms of knowledge of what	11 (Whereupon, the requested portion
12 comparable -- what is in comparable software	12 was read back by the reporter.)
13 licenses, yes, very relevant.	13 THE WITNESS: Could you read the
14 Q. How so?	14 prior question. When you say "those cases," I --
15 A. Well, because in many cases my	15 cases relating --
16 opinions deal with what is normal and customary	16 (Clarification by the court
17 in software licenses for in -- for similar	17 reporter.)
18 specially purpose and general purpose business	18 MR. FLEMING: You have to go to the
19 software.	19 question before that.
20 Q. What experience do you have with	20 THE WITNESS: The prior question, I
21 regard to the performance of obligations due	21 think.
22 under a software license agreement?	22 (The requested portion was read
23 MR. HINDERAKER: Object to the	23 back by the court reporter.)
24 question as vague.	24 THE WITNESS: I'm trying to
25 THE WITNESS: I don't understand	25 remember the details of the cases. The
1 what you're asking me.	Page 37 Page 39
2 BY MR. FLEMING:	
3 Q. Have you provided -- have you	1 Hodell-Natco dealt with SAP's -- SAP America's
4 worked as an expert witness in any case involving	2 involvement in performance of services under a --
5 the question as to a party's obligations under a	3 there may have been an implementation contract
6 software license agreement?	4 rather than a software license. I don't know
7 MR. HINDERAKER: Same objection,	5 that there were licensing issues, but there may
8 vagueness.	6 have been.
9 THE WITNESS: In a general sense,	7 State Controller's Office versus
10 many of the cases involved what was in the	8 SAP Public Services was an implementation
11 software license, as well as the actions of the	9 contract. I reviewed the software license, but I
12 licensor and licensee.	10 don't believe that there were software licensing
13 As best I understand your question,	11 issues there.
14 that's the most relevant answer I can give you.	12 The Gish versus Meisenheimer did
15 BY MR. FLEMING:	13 not have any.
16 Q. And you're referencing cases in	14 The QAD versus Ingersoll-Rand did
17 which you've testified as an expert?	15 involve software licensing issues, although I
18 A. Yes.	16 don't recall specifically off the top of my head
19 Q. Okay. Can you identify those	17 what they were.
20 cases?	18 And the Armour Capital Management
21 MR. HINDERAKER: I'm going to	19 versus SS&C Technology involved, as I recall,
22 object to the question to the extent it's asking	20 both software licensing and implementation
23 for disclosures that are beyond Rule 26. And	21 issues.
24 Mr. Hilliard's disclosures and conformance with	22 BY MR. FLEMING:
25 Rule 26 regarding his prior experience over the	23 Q. So do you recall any cases in which
Page 38	24 you've testified as an expert witness relating to
	25 a party's obligations under a software license
	Page 40

1 MR. HINDERAKER: Same objections.
2 THE WITNESS: I'll answer that if
3 so ordered by the Court.
4 The matter has been amicably
5 resolved.

6 BY MR. FLEMING:

7 Q. Is this the same Versata matter
8 that you referred to in Detroit similar issues to
9 this case?

10 MR. HINDERAKER: Same objections.

11 THE WITNESS: Same Versata.

12 BY MR. FLEMING:

13 Q. Have you ever been retained by
14 counsel for Versata as an expert witness?

15 A. Yes.

16 Q. Is the law firm in that case that
17 retained you AZA?

18 A. Yes.

19 Q. Did you prepare an expert report in
20 that case?

21 A. No.

22 Q. Were you a consulting expert in
23 that case?

24 A. Yes.

25 Q. And did you subsequently sue

Page 61

1 Versata because they failed to pay your bill?

2 MR. HINDERAKER: Same objections.

3 THE WITNESS: The matter has been
4 amicably resolved -- amicably resolved.

5 BY MR. FLEMING:

6 Q. So you're refusing to answer my
7 question as to whether you, the company that you
8 work with sued Versata for failure to pay your
9 expert consulting bill?

10 A. I'm telling you what I'm allowed to
11 tell you.

12 MR. FLEMING: Mark this as the next
13 exhibit.

14 (Deposition Exhibit 503 was marked
15 for identification.)

16 BY MR. FLEMING:

17 Q. Showing you what's been marked as
18 Exhibit 503. I'll represent to you that this is
19 a copy of the docket sheet for the lawsuit in
20 which the plaintiff is Business Automation
21 Associates and the defendant is Versata Software,
22 Inc.

23 So the complaint is a matter of
24 public record, is it not?

25 A. Yes.

1 Q. So what were the claims made by
2 your company Business Automation Associates,
3 Inc.?

4 MR. HINDERAKER: I have the same
5 objections.

6 THE WITNESS: I'm telling you what
7 I'm allowed to tell you. The matter has been
8 amicably resolved.

9 BY MR. FLEMING:

10 Q. If the complaint is a matter of
11 public record, why would you not --

12 A. You're welcome to get the public
13 record.

14 Q. -- testify?

15 And my question is different than
16 that.

17 If the complaint is a matter of
18 public record, why can you not testify about the
19 claims made in the complaint?

20 MR. HINDERAKER: Same objections.

21 THE WITNESS: I will answer any
22 questions that the Court requires me to answer.

23 BY MR. FLEMING:

24 Q. Did you sign any affidavits in this
25 case that are a matter of public record?

Page 63

1 MR. HINDERAKER: Same objections.

2 THE WITNESS: I don't recall.

3 BY MR. FLEMING:

4 Q. What is the current status of the
5 lawsuit?

6 MR. HINDERAKER: Same objections.

7 THE WITNESS: It's amicably -- it
8 has been amicably resolved.

9 BY MR. FLEMING:

10 Q. Did you ever file a dismissal of
11 the claims in the lawsuit?

12 MR. HINDERAKER: Same objections.

13 THE WITNESS: Not yet.

14 BY MR. FLEMING:

15 Q. So it's still a pending matter?

16 MR. HINDERAKER: Same objections.

17 THE WITNESS: It has been amicably
18 resolved.

19 BY MR. FLEMING:

20 Q. Because it looked like from looking
21 at the docket sheet that the matter has been
22 continued.

23 But at this point you haven't
24 filed -- none of the parties have filed a motion
25 to dismiss, correct?

Page 64

1 for identification.) 2 BY MR. FLEMING: 3 Q. Is this the document you reference 4 on page 31 of your report? 5 A. Yes. 6 Q. And this was an attachment to an 7 e-mail sent by Tamara Pawloski; is that right? 8 A. Yes. 9 Q. Do you know what Ms. Pawloski's 10 position is? 11 A. She's the VP of Software Compliance 12 and Optimization for Global Vendor Services 13 Organization for Chubb is what it says. That's 14 her domain -- e-mail domain Chubb.com, and it 15 also says Chubb above her name. 16 Q. And do you know who prepared the 17 attachment? 18 A. I don't recall whether I saw who 19 prepared it and I don't recall -- I don't recall 20 if I saw who prepared it. 21 Q. Do you know whether Ms. Pawloski 22 has any IT background or experience? 23 A. Well, if she is a VP of software 24 compliance and optimization, she has response -- 25 IT responsibility, but I don't know her	1 Q. And what documents or what data 2 would you request to see in addition to talking 3 with somebody in the IT department? 4 A. It would depend on the 5 organization. In some cases talking to someone 6 who was involved in it would be sufficient. 7 Q. Well, with regard to this 8 organization, how would you go about doing that? 9 MR. HINDERAKER: This organization 10 being the defendant? 11 MR. FLEMING: Federal, yeah. 12 MR. HINDERAKER: Objection; lack of 13 foundation. 14 THE WITNESS: I don't know enough 15 about Federal to say. 16 BY MR. FLEMING: 17 Q. And you didn't attempt to go about 18 verifying those facts, that is whether in fact 19 Blaze was actually integrated into these 15 20 applications, did you? 21 A. I took the VP of software 22 compliance and optimizations' word for it. 23 Q. And my question is whether you took 24 any other steps to verify those facts, other than 25 reading the one e-mail and the attachment? Page 175
1 background. 2 Q. Okay. You don't know what her 3 actual responsibilities were though, do you? 4 A. I just know what her title is, 5 which would indicate some IT responsibility. But 6 I don't -- I haven't seen her job description. 7 Q. What technical requirements would 8 be needed to determine whether Blaze was actually 9 integrated into these 15 applications? 10 A. Someone -- most likely someone 11 on -- in the IT -- with specific IT development 12 responsibility or someone working in the portion 13 of Chubb with IT development or deployment 14 responsibility. 15 Q. And my question is really 16 different. Not who you would talk to, but rather 17 what would you do or ask to see in order to 18 determine whether Blaze is actually integrated 19 into these 15 applications? 20 MR. HINDERAKER: Objection; beyond 21 the scope. 22 THE WITNESS: In my experience, 23 you'd have to talk to someone within Chubb who 24 was involved in these deployments. 25 BY MR. FLEMING:	1 A. I -- I did not. I just trusted 2 Ms. Pawloski. 3 Q. You say in your heading A that 4 "Blaze Advisor is integrated into core Federal 5 operations." 6 What do you mean by integration and 7 core on pages 31, and you say the same on 32? 8 A. I'm responding to Mr. McCarter's 9 report. On page 9 of Mr. McCarter's report -- 10 well, maybe it isn't -- I may have the page 11 number incorrect. Maybe it's Paragraph 74. 12 MR. HINDERAKER: Do you mind if I 13 help out by just -- I'd look at your footnote 84. 14 THE WITNESS: Oh, I'm sorry. 15 Paragraph 91 on page 24. You're correct. 16 Looking at the wrong footnote. 17 Where Mr. McCarter states, "Blaze 18 only works when it is integrated with core 19 insurance applications that have the required 20 insurance functionality and service policies," 21 and then he identifies in Paragraph 88 above that 22 it's used in 10 of Federal's 1500 applications. 23 So I'm basically responding to what 24 Mr. McCarter writes, and then I'm explaining what 25 the term integrated -- the normal and customary Page 176

1 understanding of the term integrated and core,
2 and with relation to business applications of
3 software.

4 BY MR. FLEMING:

5 Q. And what two paragraphs are you
6 reference, 88 and what other paragraph of
7 Mr. McCarter's report?

8 A. 91 on page 24.

9 Q. Okay. So in response to my
10 question, what do you mean when you say
11 integrated?

12 A. Well, I'm trying to -- I'm giving
13 the normal and customary industry understanding
14 of integrated since Mr. McCarter doesn't provide
15 that and I'm saying it normally means that a
16 component application, which would be Blaze
17 Advisor in this case, is linked into a host
18 application, here some insurance applications,
19 either the 10 referenced by Mr. McCarter or the
20 15 referenced by Ms. Pawloski, in a way that is
21 in the idea -- that in the ideal would allow
22 information to pass between them as if they were
23 a single unified application.

24 Now, this isn't always seamless. I
25 said -- so I said depending on how seamless, how

1 were represented by the Chubb VP of software
2 compliance and optimization.
3 Q. And my question is, in your
4 opinion, are you saying that the applications are
5 core or that the applications components are
6 core?

7 A. I'm saying --

8 MR. HINDERAKER: I'm going to
9 object to that question as vague.

10 THE WITNESS: Hmm?

11 MR. HINDERAKER: I object to the
12 question, as I don't understand it, as vague.

13 THE WITNESS: Let me see if I can
14 clarify what I'm saying, is the 10 or 15
15 applications itemized by Ms. Pawloski or itemized
16 by Mr. McCarter are characterized by Mr. McCarter
17 as being core applications and he characterizes
18 them that way in Paragraph 91.

19 BY MR. FLEMING:

20 Q. Well, there are -- you agree that
21 Blaze is only used in 10 of Federal's 1500
22 applications?

23 MR. HINDERAKER: Objection; lack of
24 foundation.

25 THE WITNESS: I think what I said

Page 179

1 close to that ideal the integration is, this
2 typically means that removal or replacement of an
3 integrated component is likely to be difficult,
4 time consuming and to risk endangering the
5 operation of the host application.

6 So I've defined what I mean by
7 integrated since Mr. -- which I think is a normal
8 and customary industry understanding, which is
9 something that Mr. McCarter did not do.

10 Q. So are you saying that the
11 applications are core or the application
12 components are core?

13 A. Well, let's look at what McCarter
14 says. And he says that Blaze only works when it
15 is integrated with core insurance applications,
16 what I refer to as the host applications where I
17 talk about integrated, that have the required
18 insurance functionality for selling and servicing
19 insurance policies.

20 So the applications would be either
21 the 10 that Mr. McCarter refers to in
22 Paragraph 88 and I think he itemizes them
23 actually in Paragraph 94 -- one, two, three,
24 four, five, six, seven, eight, nine -- yeah, he
25 itemizes them in Paragraph 94, or the 15 that

1 is there are two different counts and there's --
2 and Mr. McCarter doesn't account for the
3 difference between the 15 identified by
4 Ms. Pawloski and the 10 identified in his report.
5 So I don't know whether the 10 or the 15 is
6 correct. And neither does apparently
7 Mr. McCarter.

8 BY MR. FLEMING:

9 Q. Okay. I'm asking you a different
10 question.

11 Do you agree with Mr. McCarter's
12 statement that Blaze is only used in 10 of
13 Federal's 1500 applications?

14 A. No. It may be 15 or Ms. Pawloski
15 might be wrong.

16 Q. I see. So you don't disagree that
17 there's 1500 applications, but you disagree as to
18 whether there's 10 or 15 that use Blaze, correct?

19 MR. HINDERAKER: Objection; lack of
20 foundation.

21 THE WITNESS: I don't know whether
22 the 1500 is an approximate -- I'd be surprised if
23 it was exactly 1500, so I expect that's an
24 approximation. I don't know how accurate it is.

25 BY MR. FLEMING:

Page 180